

From: [LERS, EOIR \(EOIR\)](#)
To: [LERS, EOIR \(EOIR\)](#); [All of Judges \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [All of CLAD \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Allen, Patricia M. \(EOIR\)](#); [Anderson, Jill \(EOIR\)](#); [Baptista, Christina \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Burgie, Brea \(EOIR\)](#); [Burgus, Elizabeth \(EOIR\)](#); [Carr, Donna \(EOIR\)](#); [Cicchini, Daniel \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Curry, Michelle \(EOIR\)](#); [Evans, Brianna \(EOIR\)](#); [Grodin, Edward \(EOIR\)](#); [Hartman, Alexander \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Martinez, Casey L. \(EOIR\)](#); [Noferi, Mark \(EOIR\)](#); [O'Hara, Shelley M. \(EOIR\)](#); [Park, Jeannie \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Rimmer, Phillip \(EOIR\)](#); [Robbins, Laura \(EOIR\)](#); [Rodrigues, Paul A. \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Rothwarf, Marta \(EOIR\)](#); [Sanders, John W. \(EOIR\)](#); [Schaaf, Joseph R. \(EOIR\)](#); [Smith, Terry \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [Swanwick, Daniel \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#)
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**EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW**
Office of Policy | Legal Education and
Research Services Division

Policy & Case Law Bulletin
July 27, 2018

Federal Agencies

DOJ

- [Virtual Law Library Weekly Update](#) — EOIR

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- [USCIS Announces Citizenship and Assimilation Grant Opportunities](#)

On July 25, 2018, USCIS "announced [that] it is now accepting applications for two funding opportunities under the Citizenship and Assimilation Grant Program that will provide up to \$10 million in grants for citizenship preparation programs in communities across the country."

- [USCIS Continues to Expand Digital Delivery of FOIA Request](#)

On July 24, 2018, USCIS introduced "the second phase of the Freedom of Information Act (FOIA) Immigration Records SysTem (FIRST), which will allow all FOIA requestors to track their requests through a USCIS online account and receive their documents digitally."

- [New Law Extends CNMI CW-1 Program, Mandates New Fraud Fee, and Will Require E-Verify Participation](#)

"On July 24, 2018, President Trump signed the Northern Mariana Islands U.S. Workforce Act of 2018 (the Workforce Act), extending the Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker program (the CW-1 program) through 2029 and increasing the CW-1 cap for fiscal year (FY) 2019. The CW-1 program allows employers within the CNMI to apply for permission to employ foreign (nonimmigrant) workers who are otherwise ineligible to work in the CNMI under other nonimmigrant worker categories. . . . Importantly, the Workforce Act will require CNMI employers seeking CW-1 workers to enroll in E-Verify and comply with the requirements of the E-Verify program."

DOS

- [Amendments to the Terrorist Designations of al-Shabaab](#)

On July 25, 2018, [notice](#) was published in the Federal Register that the Secretary of State will continue to maintain the designation of al-Shabaab (and other aliases) as a Foreign Terrorist Organization (FTO) pursuant to the Act. On July 23, 2018, [notice](#) was published in the Federal Register that the Secretary of State amended with additional aliases the designation of al-Shabaab as a Specially Designated Global Terrorist (SDGT) in accordance with Executive Order 13224.

- [Ministerial to Advance Religious Freedom](#)

From July 24-26, 2018, “Secretary Pompeo [hosted] the Ministerial to Advance Religious Freedom in Washington, the first-ever Ministerial to advance religious freedom around the world. This event [focused] on concrete outcomes that reaffirm international commitments to promote religious freedom and produce real, positive change. The Ministerial [convened] a broad range of stakeholders, including foreign ministers, international organization representatives, religious leaders, and civil society representatives, to discuss challenges, identify concrete ways to combat religious persecution and discrimination, and ensure greater respect for religious freedom for all.”

- [DOS Updates 9 FAM](#)

DOS made updates to 9 FAM, including to section [402.10 \(U\)](#), clarifying guidance on H visas with regard to the prospective employer.

First Circuit

- [Centro Presente v. DHS](#)

No. CV 18-10340, 2018 WL 3543535 (D. Mass. July 23, 2018) (unpublished) (TPS)

The plaintiffs filed suit against DHS, President Trump, Secretary Nielsen, and Deputy Secretary Duke regarding the decisions to terminate the designation of Haiti, El Salvador, and Honduras for temporary protected status (TPS). The plaintiffs asserted that the defendants violated their equal protection and due process rights and the Administrative Procedures Act (APA). They requested mandamus relief, a declaratory judgment, and an injunction stopping the defendants from implementing or enforcing the termination of the TPS designation as to the three subject countries. The defendants moved to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim. The district court granted the defendants’ motion to dismiss with respect to the mandamus claim and denied the defendants’ motion to dismiss in all other respects.

Second Circuit

- [Zuniga-Perez v. Sessions](#)

No. 17-996, 2018 WL 3552410 (2d Cir. July 25, 2018) (Evidence; Motion to Suppress)

The Second Circuit granted the PFR, holding that because the petitioners made a sufficient showing of an egregious constitutional violation, they were entitled to a suppression hearing. The petitioners, citizens of Mexico, were arrested during a search of their residence by law enforcement officers purportedly looking for a criminal suspect pursuant to a “felony search warrant.” In removal proceedings before the IJ, the petitioners moved to suppress the evidence obtained during the search, arguing that the search violated the Fourth Amendment because it was conducted without a warrant, consent, or exigent circumstances, and, even assuming the existence of a warrant, the search exceeded its scope. Although the petitioners submitted affidavits in support of their motion, the IJ denied the motion without holding a suppression hearing, and the Board affirmed. The court determined that “there was more than ample reason for an evidentiary hearing.”

- [Hylton v. Sessions](#)

No. 17-1567-AG, 2018 WL 3483561 (2d Cir. July 20, 2018) (Controlled Substances; Aggravated Felony)

The Ninth Circuit granted the PFR, reversing the Board's determination that Hylton was ineligible for cancellation of removal because his conviction under N.Y. Penal Law § 221.45 (sale of marijuana in the third degree) constituted an aggravated felony under section 237(a)(2)(A)(iii) of the Act. The court held that the Board erred in finding there was no "realistic probability" that New York would apply § 221.45 to conduct outside the generic federal felony because the state statute on its face punishes conduct classified as a federal misdemeanor. Accordingly, the court held that § 221.45 categorically is not an aggravated felony.

Fourth Circuit

- [Mballa Bouba v. Sessions](#)

No. 17-1403, 2018 WL 3549714 (4th Cir. July 24, 2018) (unpublished) (Asylum; Corroboration)

The Fourth Circuit denied the PFR, affirming the Board's decision to dismiss the appeal. Mballa Bouba, an Apostolic Christian of Haitian parentage from the Central African Republic, sought asylum, withholding of removal, and protection under the Convention Against Torture based on her fear of ethnic and religious persecution in her home country. An immigration judge found her testimony credible, but concluded that corroborating evidence was necessary to grant her relief, and the Board affirmed. The court held that requiring Mballa Bouba to produce corroborating evidence from her husband was not "manifestly contrary to the law and an abuse of discretion." It further held that Mballa Bouba had not established a well-founded fear of future persecution in the Central African Republic. One judge dissented, opining that the IJ and BIA abused their discretion because they disregarded important aspects of Mballa Bouba's claim, and failed to offer a reasoned explanation for their decisions.

- [Dong v. Sessions](#)

No. 17-1526, 2018 WL 3493037 (4th Cir. July 20, 2018) (unpublished) (Asylum; Burden of Proof)

The Fourth Circuit granted the PFR, concluding that the Board erred in holding that the government rebutted the presumption of a well-founded fear of persecution. The court determined that the record did not support a finding that the government established, by a preponderance of the evidence, the requisite "changed circumstances." As for whether future persecution could be avoided through relocation, the court held that the burden was improperly shifted to Dong on that issue.

Eighth Circuit

- [United States v. Myers](#)

No. 17-2415, 2018 WL 3523682 (8th Cir. July 23, 2018) (Aggravated Felony; Crime of Violence)

The Eighth Circuit affirmed the district court's decision to sentence Myers as an armed career criminal based on one prior serious drug conviction and two prior violent felonies. Applying the categorical approach, the court held that Myer's convictions under Ark. Code Ann. § 5-13-301(a)(1)(A) (first-degree terroristic threatening) and Ark. Code Ann. § 5-13-202(a) (second-degree battery) were both violent felonies under the ACCA, 18 U.S.C. § 924(e)(2)(B)(i) (force clause).

Ninth Circuit

- [Allen v. Milas](#)

No. 16-15728, 2018 WL 3543152 (9th Cir. July 24, 2018) (Visa; Consular Nonreviewability)

The Ninth Circuit affirmed the district court's denial of Allen's petition for a writ of mandamus. Allen brought an action under the Administrative Procedure Act (APA) challenging the denial of his wife's visa application by the U.S. Consulate in Frankfurt, Germany. The court held that the only standard by which it reviews the merits of a consular officer's denial of a visa is for constitutional error, where the visa application is denied without a "facially legitimate and bona fide reason." In this case, the APA provided no avenue for judicial review.

- [Martinez-Cedillo v. Sessions](#)

No. 14-71742, 2018 WL 3520402 (9th Cir. July 23, 2018) (Child Abuse; Retroactivity)

The Ninth Circuit denied the PFR. Joining the Second Circuit, the court deferred to the Board's reasonable interpretation that Cal. Penal Code § 273a(a) (child abuse) is categorically a crime of child abuse, neglect, or abandonment. The court further held that the Board's interpretation applies retroactively to Martinez-Cedillo's 2008 conviction.

- [Sanghera v. Sessions](#)

No. 14-73507, 2018 WL 3523686 (9th Cir. July 23, 2018) (unpublished) (Child Abuse; Retroactivity)

The Ninth Circuit granted the PFR, holding that the IJ abused his discretion by applying the Board's 2008 definition of "crime of child abuse" from [Matter of Velazquez-Herrera](#), 24 I&N Dec. 503 (BIA 2008) (Velazquez II) retroactively to Sanghera's 2001 conviction for Cal. Penal Code section 273a(a) (child abuse). The court determined that it was reasonable for Sanghera to rely on [Matter of Rodriguez-Rodriguez](#), 22 I&N Dec. 991 (BIA 1999) and anticipate immigration consequences based on that Board decision, not Velazquez II. Applying the federal generic definition of crime of child abuse from Rodriguez-Rodriguez, the court held that Cal. Penal Code section 273a(a) was overbroad and indivisible, therefore the respondent was not removable. One judge dissented, stating that he would deny the PFR because the case is substantially identical to Martinez-Cedillo, No. 14-71742, 2018 WL 3520402 (9th Cir. July 23, 2018), decided the same day as this case, wherein the court held that the Board's decision in [Matter of Soram](#), 25 I&N Dec. 378 (BIA 2010) applied retroactively to Martinez-Cedillo's August 2008 conviction under Cal. Penal Code § 273a(a).

- [Sanchez v. Sessions](#)

No. 14-71768, 2018 WL 3453363 (9th Cir. July 18, 2018) (Evidence; Motion to Suppress)

The Ninth Circuit issued an order withdrawing its opinion and the concurring opinions filed August 30, 2017, appearing at [Sanchez v. Sessions](#), 870 F.3d 901 (9th Cir. 2017) (addressing "(1) whether Sanchez was seized at the border, where Fourth Amendment protections are lower; (2) whether Sanchez established a prima facie case that the Coast Guard officers violated his Fourth Amendment rights; and, if so, (3) whether that violation was egregious"). Those opinions may not be cited by or to the Ninth Circuit or any district court within the Ninth Circuit and "a new disposition will be filed in due course."